IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.550 OF 1995

The State of Maharashtra]..Appellant

Vs.

Prashuram Shankar Salvi]
Hindu, Age 47 yrs.]
Residing at 2/17, Amrut Yog]
Society, Pune Bombay Road,]
Manisha Nagar, Kalva,]
Dist. Thane]..Respondent

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Mr.A.S.Shitole, A.P.P. for the State.
Respondent though served, none for respondent

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CORAM: SMT.V.K.TAHILRAMANI,J.

DATE : NOVEMBER 29,2004

ORAL JUDGMENT:

1. Through this appeal, the appellant i.e. State of Maharashtra has challenged the judgment and order dated 14th October, 1994, passed by the learned Special Judge, Gr.Bombay in Special Case No. 17 of 1989. By the said judgment and order, the learned Special Judge acquitted the respondent-original accused of the offence under Section 161 of IPC and under Section 5(2) read with Section 5(1)(d) of the Prevention of Corruption Act, 1947.

2. Briefly stated the prosecution case is as under:

. That the respondent-accused at the relevant time, was serving as a P.S.I. at Kurla Police Station. The complainant P.W.4 Jagdipsing B.Potiyani resided in Abdulla Khan Chawl in the year 1988. There were ten rooms and five shops in the said Chawl. Though, there was water tap connection in all the rooms but there was no tap connection in any of the shops. The shop adjoining to the room of the complainant Jagdipasing, was occupied by one Amrutlal Badelal who was the son of the brother of Amrutlal. The said shop was used by Badelal & Amrutlal as a laundry. About 15 years back, on the request of Amrutlal, P.W.4 Jagdipsing allowed Amrutlal to take water from the tap in his room. However, Amrutlal was collecting water at odd hours in the night, hence, P.W.4 Jagdipsing asked Amrutlal not to take water from his tap and that he should arrange for a separate connection. However, Amrutlal continued to take water from the room of P.W.4 Jagdipsing. On account of this dispute, Badelal Amrutlal presented application Exhibit-15 to the P.S.I. of Kurla Police Station on 14.5.1988. The inquiry in the said application was initially entrusted to some other officer, thereafter, it was entrusted to respondent-accused. On 4.7.1988, P.S.I. Patkar

directed P.W.1 Chandrakant Rane to bring P.W.4 Jagdipsing to the Police Station. Accordingly, he produced Jagdipsing before P.S.I. Patkar. P.S.I. Patkar questioned Jagdipsing as to why he had stopped water supply and told him that the water supply was an essential item hence, he should restore the same immediately. Jagdipsing told P.W.6 P.S.I.Patkar that he had not cut off the water supply and that Amrutlal should approach B.M.C. as the B.M.C. has cut the water supply. On oral inquiry, P.S.I.Patkar found that Jagdipsing was not responsible for the stoppage of the water supply hence, he directed Amrutlal to approach B.M.C.

. Further the prosecution case is that on 11th July, 1988 at about 11 a.m. the respondent-accused deputed constable to call P.W.4 Jagdipsing to the Police Station. When Jagdipsing arrived, respondent-accused P.S.I. Salvi made him sit for four hours and then asked him to go home. On 12th July, 1988 again Jagdipsing was called to the Police Station. Jagdipsing went to the Police Station on 12th July, 1988 at about 10 a.m. The respondent P.S.I. Salvi questioned Jagdipsing as to why he had stopped giving water to Amrutlal. Whereupon, Jagdipsing told respondent that Amrutlal was getting water from his tap connection and he was at liberty

to check the same by visiting his room. At that time, the respondent told him that he should pay him Rs.900/-. Jagdipsing told that he did not have money hence, the respondent asked him to bring the same on 13th July, 1988 at 2 p.m. Jagdipsing agreed to the said suggestion and went home. On reaching home, he informed his father about what had transpired and his father advised him to report the matter to Anti Corruption Bureau. On 13th July, 1988 at 10 a.m. P.W.4 Jagdipsing approached the office of Anti Corruption Bureau. There he narrated all the facts to P.W.9 Arun Hande. On the basis of complaint (Exhibit-18), the offence came to be registered. Thereafter, pre-trap formalities were carried out. Nine Government Currency notes of Rs.100/- denomination each, which were produced by Jagdipsing, were treated with Anthracene powder. A tape recorder along with blank tape cassette after recording the voice of the panch witness P.W.8 Maruti Zapade in it, was handed over to the complainant Jagdipsing. The complainant Jagdipsing kept the same in his pant pocket. The complainant Jagdipsing was instructed to switch on the tape recorder at the time of transaction. He was also instructed that after accused accepted the bribe, he was to give a signal to the raiding party. Thereafter, all proceeded to Kurla Police Station

and the raiding party stayed at a distance away from the Police Station and only the complainant Jagdipsing and the panch witness P.W.8 Maruti Zapade went inside at about 7.15 p.m. The complainant told the respondent that he had brought the money as demanded by him. It is the prosecution case that the respondent asked complainant as to how much he had brought, whereupon the complainant Jagdipsing replied that he had brought 900. The respondent told the complainant that money should be given in an envelop. However, the complainant stated that he did not have any envelop. On hearing this, the respondent said that they should go on the first floor. On the first floor, there was a cupboard. The respondent unlocked the said cupboard. The respondent asked the complainant Jagdipsing to keep the amount in the said cupboard. However, P.W.4 Jagdipsing told the respondent that he should keep the money with his own hand in the cupboard. The accused then took the money in his right hand, counted money with both his hands and kept the same in the cupboard and thereafter kept it on the book and thereafter placed a diary on it. The respondent-accused then locked the cupboard. Thereafter the complainant gave prearranged signal, the raiding party then came and caught the respondent. Under ultra-violet rays, the right hand

of the complainant was found to have bluish glaze, however, neither the keys of the cupboard nor the handle of the cupboard nor the left hand of the respondent-accused had any traces of Anthracene powder. Thereafter post-trap formalities were completed. The cassette came to be seized. The Commissioner of Police accorded the sanction to prosecute the respondent-accused. Thereafter, the charge sheet came to be filed against the respondent-accused.

3. In due course, the charge under Section 161 of IPC and under Sections 5(2) read with Section 5(1)(d) of the Prevention of Corruption Act, 1947 was framed against the respondent-accused. The respondent-accused pleaded not guilty to the said charge and claimed to be tried. It is his defence that there was a dispute on account of fetching water between P.W.4 Jagdipsing and one Razak Amrutlal. Due to which, Razak Amrutlal presented application dated 14.5.1988 to Kurla Police Station. It is also admitted that the said application was entrusted to him. However, he has denied that he met complainant P.W.4 Jagdipsing at the police station on 5th July, 1988 or on 11th July, 1988. As regards the incident on 12th July, 1988, it is his defence that on the said day, on account of serious

motor accident, he had to go to Sion Hospital and to the site of the accident. He returned to the police station at about 3.00 to 3.30 p.m. The respondent denies demanding any money from the complainant P.W.4 Jagdipsing on 12th July, 1988. In respect of the incident of 13th July, 1988, it is the defence of the respondent-accused that at about 7.15 p.m. the complainant and P.W.8 Maruti Zapade came to the police station. However, no conversation relating to the bribe took place. Thereafter, he recorded statement of the complainant P.W.4 Jagdipsing, however, after he recorded his statement, he received message that he was required by the Assistant Commissioner of Police on the first floor in connection with the offence in which BST employee was involved. Hence, he went to the first floor, he opened his cupboard on the first floor and carried the file relating to the said case to the room of Assistant Commissioner of Police. He returned back from the office of the A.C.P. within ten minutes. He put the file back in the cupboard and locked the cupboard and put key in his pocket. At that time, he noticed the complainant standing in the balcony and he questioned complainant as to why he came. The complainant stated that he had come to seek his permission to go home. The respondent told the complainant that he was at liberty to go home. Then

complainant shook his hand. When the respondent was coming down the staircase, he was caught by the police. It is further his defence that one Ravi Sansare a known Gunda and the complainant are close friends. Both of them used to extract money for functions like ‘Buddha Jayanti’ and ‘Ambedkar Jayanti’ from the people under the garb of seeking donations to celebrate these functions. Sometime prior to the incident, the respondent had arrested Ravi Sansare and warned him that if he continued with his extortion activities, he would be arrested in that case, therefore, he falsely involved the respondent-accused.

4. After going through the evidence adduced by the prosecution, the learned Special Judge acquitted the respondent-accused of all the charges. Hence, this appeal.

5. I have heard Shri.A.S.Shitole, the learned A.P.P. for the State. None appears for the respondent though served. I have also perused the entire record pertaining to the present case. After carefully considering the matter, I have reached the conclusion that this appeal deserves to be dismissed.

6. Two main witnesses in the present case are the complainant P.W.4 Jagdipsing and panch witness P.W.8 Maruti Zapade. In the present case, during the pre-trap formalities, empty cassette was given to the complainant along with tape-recorder to record the conversation of the respondent and the complainant. The said cassette was played in the Court. However, as the contents of the said cassette were not clear and were almost unintelligible on account of cassette being spoiled, the said evidence is of no use to the prosecution.

7. It was initially the case of the complainant as stated in his F.I.R. Exhibit-18 that he was called at Kurla Police Station on 8.7.1988 when he was questioned by P.S.I. Patkar as to why he had stopped the water supply to Amrutlal. However, in his supplementary statement, he corrected his earlier stand by stating that this did not happen on 8th July, 1988 but it happened on 4th July, 1988. So also, in the F.I.R., the complainant made a positive statement that he was called at the Police Station on 9th July, 1988 and at that time, he was placed before P.S.I. Salvi (respondent-accused). P.S.I. Salvi insisted that he should allow Amrutlal to take water from his room and P.S.I.Salvi made him to sit upto 1 p.m. then he was allowed to go.

However, in his supplementary statement, he said that all these incidences occurred on 11th July, 1988 and not on 9th July, 1988. All these facts have been brought on record. Thus the complainant has stated in the F.I.R. that he was called at the Police Station on 8th July, 1988 and 9th July, 1988 but subsequently, he changed both these dates to say that he was called at the Police Station on 4th July, 1988 and 11th July, 1988. In view of such material contradictions, it would not be safe to rely on the evidence of the complainant P.W.4 Jagdipsing alone and the evidence of complainant would require corroboration from an independent source.

8. From the evidence on record, it appears that for the first time the complainant and respondent met on 11th July, 1988. 11th July, 1988 according to the prosecution, is the starting point when the complainant came into contact with accused. The complainant has stated that he was called at the Police Station by the respondent-accused on 11th July, 1988. P.W.5 Police Constable Uddhav Gunjal has stated that he produced the complainant P.W.4 Jagdipsing before the P.S.I. Salvi on 12th July, 1988 at 10 a.m. However, thereafter, he has stated that within 5-10 minutes after he produced

Jagdipsing before P.S.I. Patkar, he accompanied P.S.I. Salvi to Sion hospital to investigate a case in connection with an accident. The station diary pertaining to 12th July, 1988 shows that for the most part of the day, the respondent-accused was busy in connection with various cases outside the Police Station.

9. The complainant P.W.4 Jagdipsing has stated that on 13th July, 1988 he handed over 900 rupees to the respondent-accused at about 7.15 p.m. The complainant told the respondent that he had brought the money as demanded by him. It is the prosecution case that the respondent asked complainant as to how much he had brought, whereupon the complainant Jagdipsing replied that he had brought 900. The respondent told the complainant that money should be given in an envelop. However, the complainant stated that he did not have any envelop. On hearing this, the respondent said that they should go on the first floor. On the first floor, there was a cupboard. The respondent unlocked the said cupboard. The respondent asked the complainant Jagdipsing to keep the amount in the said cupboard. However, P.W.4 Jagdipsing told the respondent that he should keep the money with his own hand in the cupboard. The accused then took the money in his

right hand, counted money with both his hands and kept the same in the cupboard and thereafter kept it on the book and thereafter placed a diary on it. The respondent-accused then locked the cupboard. Thereafter the complainant gave prearranged signal, the raiding party then came and caught the respondent.

. No doubt, it is true that money was found in the cupboard of the respondent-accused. However, it is to be seen that whether the accused was in conscious possession of the same. If the version of the complainant is believed, then there ought to be Anthracene powder' on both the hands of the accused as well as on the key of the cupboard and the handle of the cupboard. However, surprisingly, no anthracene powder is found on the left hand of the accused, the key of the cupboard and the handle of the cupboard. Anthracene powder is found only on the right hand of the accused which is consistent with his stand that the complainant shook hands with him before leaving.

10. In all four police constables have been examined. Out of these four police constables, P.W.1 Chandrakant Rane and P.W.2 Maruti Thorat had gone to call the complainant at the instance of

P.S.I.Patkar. Oral enquiry which P.S.I.Patkar has made, has nothing to do with the accused. Other two police constables i.e. P.W.3 Sanjay Bhandare and P.W.5 Uddhav Gunjal both referred to the visit of Jagdipsing on 12th July, 1988. It is pertinent to note that there is no single witness to show that complainant was called by the respondent on 11th July, 1988.

11. Complainant P.W.4 Jagdipsing has stated that he was called by the respondent to the Police Station on 12th July, 1988 at about 4 p.m. However, from the testimony of P.W.3 Sanjay Bhandare and P.W.5 Uddhav Gunjal it is clear that the complainant was not called at the Police Station at 4 to 4.30 p.m. but he was called at the Police Station at 10 p.m. on 12th July, 1988. P.W.5 Police constable Uddhav Gunjal has stated that he was all along with P.W.4 Jagdipsing when Jagdipsing was brought to the police station and when he was produced before the respondent-accused. P.W.5 Uddhav Gunjal also states that in that period the complainant Jagdipsing did not meet anyone. Thereafter, it has come on record that P.W.5 Uddhav Gunjal and respondent had both gone to the site of accident in connection with motor accident case. Thus from the evidence of the prosecution witness P.W.5 Uddhav Gunjal, it is seen

that accused had no opportunity on 12th July, 1988 to make any demand from the complainant. The complainant has stated in his FIR that the demand was made by the respondent-accused between 9 a.m. to 1 p.m. on 12th July, 1988. However, in view of the evidence of P.W.5 Uddhav Gunjal and the other material on record, the prosecution case on the point of demand on 12th July, 1988, cannot be accepted.

12. I have already observed above that the evidence of complainant is full of material contradictions and as such, in such case, it would be necessary to look through the other evidence which corroborates or lends support to the evidence of complainant. The other material witness in this case, is P.W.8 Maruti Zapade. He had accompanied the complainant on 13th July, 1988 when the complainant went to meet the respondent. On going through the evidence of P.W.8 Maruti Zapade, it is seen that his evidence is inconsistent with the evidence of complainant. P.W.8 Maruti Zapade has made great embellishment in his evidence. He has stated that complainant told him that accused told the complainant that "You are terrorist and by branding you as terrorist, I will put you in jail". It is not known from where the panch has invented this story. It appears that it

was witness P.W.8 Maruti Zapade who has given imaginary conversation by answering to the questions which were put to him in cross-examination. In the present case, the entire case arose on account of a dispute relating to water supply and water tap. It has nothing to do with any of the persons therein being terrorist or being falsely accused of being a terrorist. Further it is not even the case of the complainant that the respondent-accused had threatened him saying that he would brand him terrorist or that he was a terrorist. Witness Maruti Zapade further stated that "When I myself and complainant Jagdipsing were made to sit on the bench, P.S.I Salvi by pointing his hand towards me signalled Jagdipsing to tell as to who I was and then Jagdipsing stated that he lives in a house by my side, he has been sent by my mother with me, my mother has asked him to see whether I pay the amount to the PSI after going to the Police Station or not. It is not the prosecution case that the respondent ever questioned the complainant about the presence of panch witness Maruti Zapade. It appears from the evidence of Maruti Zapade, and the evidence on record that panch witness Maruti Zapade is an over zealous witness. The story given by him is not given by the complainant. There are material contradictions in the evidence of complainant and

this witness. Looking to all these facts the conclusion of the learned Special Judge that the evidence of complainant as well as panch witness, is not worthy of reliance, cannot be faulted.

13. The learned Special Judge has given plausible reasons for acquittal in the impugned judgment. It is well settled that if the view of acquittal could have been reasonably arrived at, then the mere circumstance that the appellate Court could have taken a different view, would be no ground to interfere. In this connection, there is no dearth of authorities. To eschew prolixity, I am only referring to two of them i.e. **A.I.R. 1971 S.C. 66 (Khedu Mohton Vs. State of Bihar) and (2003) 1 S.C.C. 1 (C.Anthony Vs. K.G.Raghavan Nair).** In the case of **C.Anthony,** the Supreme Court has observed that unless findings of the trial Court are perverse or contrary to the material on record, the High Court cannot in appeal, substitute its findings merely because other contrary opinion was possible on the basis of the material on record. In my view, the view of acquittal was a reasonable and possible view.

14. In the circumstances, I find no merit in this appeal and the same is dismissed. The judgment and

order of acquittal recorded by the learned Special Judge, Gr.Bombay, dated 14th October, 1994 in Special Case No. 17 of 1989 is confirmed. The bail bonds of the accused shall stand cancelled.

[V.K.TAHILRAMANI.J]